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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-579

VADEE KROFT, M. D. ..... *Petitioner*

v.

WILBUR H. COX, D. B. CHEAIRS, M. D., ARGONAUT SOUTHWEST INSURANCE CO., INSURER FOR BAPTIST MEDICAL CENTER, and ST. PAUL FIRE and MARINE INSURANCE CO. ..... *Respondents*

APPENDIX

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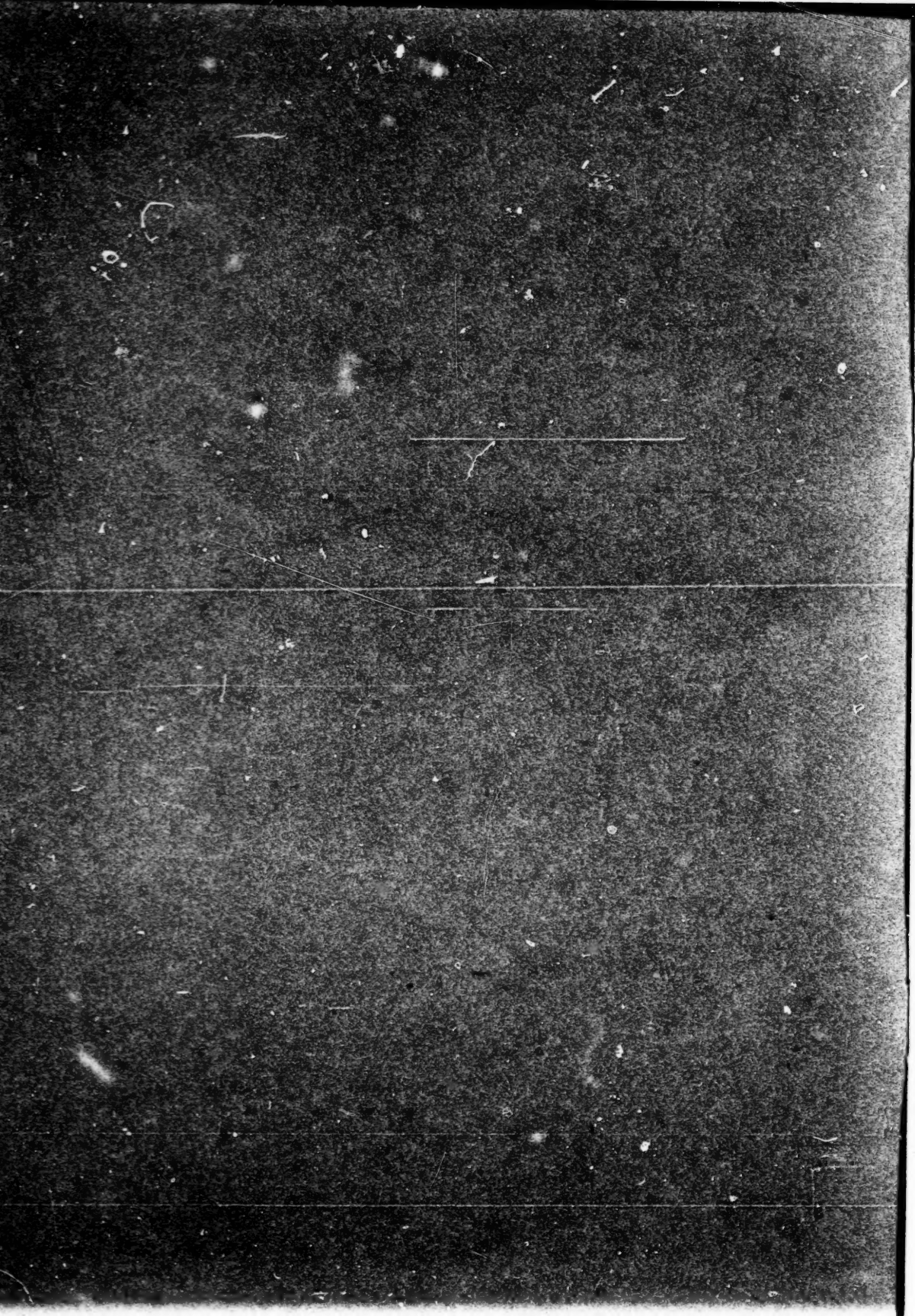
PARAGON PRINTING CO., LITTLE ROCK



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APPENDIX
A

SUPREME COURT OF THE UNITED STATES
No. A-311, October Term, 1971

VADEE KROFT, M. D. ..... PETITIONER

v.

WILBUR H. COX ..... RESPONDENT

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including, October 27, 1971.

/s/ Harry A. Blackmun
Associate Justice of the Supreme
Court of the United States

Dated this 21st
day of September, 1971

APPENDIX
B

PULASKI CIRCUIT COURT, THIRD DIVISION
MARCH TERM, 1970
THURSDAY, APRIL 23, 1970

WILBUR H. COX — PLAINTIFF

Vs 70913

D. B. CHEAIRS, V. KROFT, and
(THE ARGONAUT SOUTHWEST
INSURANCE COMPANY), Insurers of
ARKANSAS BAPTIST MEDICAL
CENTER — DEFENDANTS

JUDGMENT

On the 31st day of March, 1970, this cause came on to be tried, plaintiff Wilbur H. Cox appearing in person and by his attorneys Donald S. Ryan and Lowber Hendricks; D. B. Cheairs appearing in person and by his attorney Alston Jennings, V. Kroft appearing in person

and by her attorney Steele Hays; and The Argonaut Southwest Insurance Company appearing by its attorney William A. Eldredge, Jr.; and all parties announcing ready for trial, a jury composed of Leland Jones, Jr., and eleven other members of the regular panel of the petit jury for this term of court was duly selected, empaneled and sworn to try the issues of fact arising herein.

The trial of this cause not being concluded on March 31, 1970, it was continued on April 1, 1970; and, after hearing the statements of counsel, the testimony and evidence on behalf of all parties, the instructions of the Court and the arguments of counsel, the jury retired and, after due deliberation, returned into open court the following verdict, to-wit:

1. Do you find from a preponderance of the evidence that Dr. V. Kroft was guilty of negligence which was a proximate cause of the occurrence?

   Answer: Yes.

2. If you have answered Interrogatory No. 1 with a "Yes", then answer this Interrogatory: Do you find from a preponderance of the evidence that the negligence of Dr. Kroft is imputed or charged to Dr. D. B. Cheairs?

   Answer: No.

3. Do you find a preponderance of the evidence that Dr. D. B. Cheairs was guilty of negligence that was separate and independent of the actions of Dr. Kroft, which was a proximate cause of the occurrence?

   Answer: Yes.

4. If you have answered more than one of Interrogatories Nos. 1 and 3 with a "Yes", then answer this Interrogatory: Using 100% to represent the total responsibility for the occurrence and any injuries or damages resulting from it, apportion the responsibility between the parties whom you have found to be responsible.

Dr. Kroft	65%
Dr. D. B. Cheairs' Negligence which is separate from and independent of that of Dr. Kroft	35%
Total	100%

5. State the amount of any damage which you find from a preponderance of the evidence was sustained by Wilbur H. Cox as a result of the occurrence, which was proximately caused by negligence of one or more of the defendants. Answer: $37,000.00.

After the said verdicts had been returned by the jury and before judgment was entered thereon, Dr. D. B. Cheairs moved the Court for judgment notwithstanding the verdict, and the plaintiff responded to the said motion and opposed it.

The Court finds that there is no substantial evidence to sustain a verdict against Dr. D. B. Cheairs on the basis of negligence on his part that was separate from and independent of the actions of Dr. Kroft, and the verdicts numbered 3 and 4 ought to be set aside and judg-

ment ought to be entered in favor of Dr. Cheairs, to which action of the Court the objection of the plaintiff is noted .

WHEREFORE, it is by the Court considered, ordered and adjudged that Wilbur H. Cox have and recover of and from V. Kroft and The Argonaut Southwest Insurance Company the sum of Thirty Seven Thousand Dollars ($37,000.00), together with all of his costs herein expended; that Wilbur H. Cox have and recover nothing from D. B. Cheairs and that the complaint of the plaintiff against D. B. Cheairs be dismissed with prejudice; that in the event of the payment by The Argonaut Southwest Insurance Company of all or any portion of the judgment entered herein the said Argonaut Southwest Insurance Company have judgment over against V. Kroft to recover the amount so paid; that Royal-Globe Insurance Company have a lien on the said judgment in favor of Wilbur Cox to the extent of Four Thousand Six Hundred Dollars ($4,600.00) and that the said Royal-Globe Insurance Company be entitled to payment in that amount out of the proceeds of the judgment; and that the said judgment bear interest according to law.

ENTERED this 23rd day of April, 1970

/s/ Tom F. Digby

CIRCUIT JUDGE

APPROVED AS TO FORM:

/s/ Don Ryan

Attorney for Plaintiff

/s/ Alston Jennings

Attorney for D. B. Cheairs

/s/ Steele Hays

Attorney for V. Kroft

/s/ Wm. Eldredge, Jr.

Attorney for Argonaut Southwest
Insurance Company

APPENDIX
C

IN THE SUPREME COURT OF ARKANSAS

V. KROFT and THE ARGONAUT SOUTHWEST INSURANCE COMPANY, APPELLANTS,

VS. Series 5 — No. 5418

WILBUR H. COX, APPELLEE.

MOTION TO DISMISS

Comes now the appellee, by his attorneys, and for his Motion states:

I

That the judgment rendered herein and appealed from has been satisfied in full and the issues involved herein have become moot.

II

That the appeal of V. Kroft and The Argonaut Southwest Insurance Company and the Cross Appeal of Wilbur H. Cox should both be dismissed.

/s/ Donald S. Ryan

Donald S. Ryan
Martin, Dodds, Kidd, Hendrix, & Ryan
Attorney for Wilbur H. Cox, Appellee

CERTIFICATE OF SERVICE

I, Donald S. Ryan, attorney for Appellee, do hereby certify that a copy of the foregoing Motion To Dismiss has been mailed to Spitzberg, Mitchell & Hays, Pyramid Life Building, Smith, Williams, Friday & Bowen, Boyle Building, and Wright, Lindsey and Jennings, Worthen Bank Building, this 18 day of October, 1970.

/s/ Donald S. Ryan

Donald S. Ryan

Filed Oct. 21, 1970
Jimmy H. Hawkins, Clerk

APPENDIX
D

STATE OF ARKANSAS,)
In the Supreme Court) SCT.

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 5th

day, beginning the first Monday of October, A. D. 1970, amongst others were the following proceedings, to-wit: On the 9th day of November, A. D. 1970, a day of said term

V. KROFT, ET AL APPELLANT

No. 5418 vs.

WILBER H. COX APPELLEE

Appeal from Pulaski 3rd Div.

Motion of appellee to dismiss appeal is granted.

IN TESTIMONY, That the above is a true copy of the order of said Supreme Court, rendered in the case therein stated, I, JIMMY H. HAWKINS, Clerk of said Supreme Court, hereunto set my hand and affix the Seal of said Supreme Court, at my office in the city of Little Rock, this 3rd day of November, A. D. 1971.

Jimmy H. Hawkins
Clerk

By /s/ Carl H. Baker
D. C.

APPENDIX
E

STATE OF ARKANSAS,)
In the Supreme Court) SCT.

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 5th

day, beginning the first Monday of October, A. D. 1970, amongst others were the following proceedings, to-wit:

On the 24th day of May, A. D. 1971, a day of said term

VADEE KROFT, ET AL Petitioner
No. 5660 vs.
WILBUR H. COX Respondent

Petition for Writ of Certiorari

Petition for Writ of Certiorari is presented and denied.

IN TESTIMONY, That the above is a true copy of the order of said Supreme Court, rendered in the case therein stated, I, JIMMY H. HAWKINS, Clerk of said Supreme Court, hereunto set my hand and affix the Seal of said Supreme Court, at my office in the city of Little Rock, this 3rd day of November, A. D. 1971.

Jimmy H. Hawkins
Clerk

By /s/ Carl H. Baker
D. C.

APPENDIX
F

STATE OF ARKANSAS,)
In the Supreme Court) SCT.

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 5th

day, beginning the first Monday of October, A. D. 1970, amongst others were the following proceedings, to-wit: On the 28th day of June, A. D. 1971, a day of said term

VADEE KROFT, ET AL Petitioner
No. 5660 vs.
WILBUR H. COX Respondent

Petition for Writ of Certiorari

Petition for rehearing denied.

IN TESTIMONY, That the above is a true copy of the order of said Supreme Court, rendered in the case therein stated, I, JIMMY H. HAWKINS, Clerk of said Supreme Court, hereunto set my hand and affix the Seal of said Supreme Court, at my office in the city of Little Rock, this 3rd day of November, A. D. 1971.

Jimmy H. Hawkins
Clerk

By /s/ Carl H. Baker
D. C.

APPENDIX
G

STATE OF ARKANSAS,)
In the Supreme Court) SCT.

BE IT REMEMBERED, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court Room in the City of Little Rock, on the 5th day, beginning the first Monday of October, A. D. 1970, amongst others were the following proceedings, to-wit:

On the 20th day of September, A. D. 1971, a day of said term

VADEE KROFT, ET AL Petitioner
No. 5660 vs.
WILBUR H. COX Respondent

Petition for Writ of Certiorari

Petition of appellant to reconsider and re-open case is denied.

IN TESTIMONY, That the above is a true copy of the order of said Supreme Court, rendered in the case therein stated, I, JIMMY H. HAWKINS, Clerk of said Supreme Court, hereunto set my hand and affix the Seal of said Supreme Court, at my office in the city of Little Rock, this 3rd day of November, A. D. 1971.

Jimmy H. Hawkins
Clerk

By /s/ Carl H. Baker
D. C.

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OCTOBER TERM, 1971

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v.

WILBUR H. COX, D. B. CHEAIRS, M. D.,
ARGONAUT SOUTHWEST INSURANCE CO.,
INSURER FOR BAPTIST MEDICAL CENTER,
and ST. PAUL FIRE AND MARINE
INSURANCE CO. ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

EUGENE B. HALE, JR.

Counsel for Petitioner

1105 Union National Plaza
Little Rock, Arkansas 72201

PARAGON PRINTING CO., LITTLE ROCK

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

VADEE KROFT, M. D. ..... *Petitioner*

v.

WILBUR H. COX, D. B. CHEAIRS, M. D.,
ARGONAUT SOUTHWEST INSURANCE CO.,
INSURER FOR BAPTIST MEDICAL CENTER,
and ST. PAUL FIRE AND MARINE
INSURANCE CO. ..... *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Arkansas entered in this matter May 17, 1971, and as to which rehearing was denied June 28, 1971.

Note: The time within which to file this petition, was on September 27, 1971, and extended to and including October 27, 1971, by order of Mr. Justice Blackmun (See Appendix A).

Note: Vol. 1 of the record reflects the certiorari record.

Vol. II of the record reflects the record of the dismissed appeal.

JURISDICTION

The judgment of the Supreme Court of Arkansas as to which review is sought was entered May 17, 1971. It denied the petitioner's application for a Writ of Certiorari, without rendering any opinion whatsoever. Rehearing was denied June 28, 1971, without any opinion whatsoever. A petition extraordinary (a petition to reopen and to reconsider, and to grant a writ of certiorari) was denied September 20, 1971, without any opinion whatsoever.

The jurisdiction of this Court is invoked under 28 USC Section 1257(3).

CITATIONS

The absence of citations in petitioner's brief exist because the denial of petitioner's rights of due process were so flagrant that authority by virtue of the Fourteenth Amendment to the Constitution of the United States prevails sufficiently.

QUESTION PRESENTED

An unusual question is presented to this Court, and this is probably the first time such a question has been presented to this Court because of the nature and the unusual circumstances as set out herein.

Petitioner, a licensed physician in the State of Arkansas, had appealed a judgment from the Pulaski County Circuit Court, to the Arkansas Supreme Court. While this appeal was pending, attorneys for the insurance

companies involved (*all of them, adversaries*), agreed on a settlement, and satisfied the judgment, and dismissed the appeal without the petitioner's knowledge, approval or consent, and at a time when the petitioner did not have counsel or legal representation, thereby depriving petitioner of due process of law.

Petitioner's former counsel, at the time the case was dismissed, was serving a vacancy as Circuit Judge, and did not and could not represent the petitioner.

Therefore, petitioner was without counsel at the time her appeal was dismissed by the Arkansas Supreme Court, and she did not learn of this dismissal, until sometime thereafter, at which time she did seek her right to have representation, by employing other counsel, who in turn filed a Petition for Writ of Certiorari before the Arkansas Supreme Court, asking that Court to review the appeal.

Petitioner was denied her Civil Rights and Constitutional Procedural Rights of Due Process, and was deprived of property and personal rights, and was denied the basic right of having representation by counsel while her appeal was pending before the Arkansas Supreme Court.

This was a denial of the most basic right provided in our system of jurisprudence.

In effect, the Arkansas Supreme Court did deprive the petitioner of her rights under the Due Process Clause of the Fourteenth Amendment, to the Constitution of the United States, in denying her, on the merits, a review of the judgment in the lower Court, based solely on (a) certain admissions, or omissions, which were made without legal representation and the advice of counsel, or an opportunity to consult with counsel, and without her knowledge and consent; (b) unfair procedure and denial

of due process whereby the petitioner was found guilty of malpractice because her appeal was dismissed without her knowledge and without any legal representation; (c) unfair procedure and denial of due process whereby the Arkansas Supreme Court permitted the dismissal of her appeal without her knowledge or consent, and without benefit of representation by counsel in an adversary proceeding of extreme importance.

CONSTITUTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law;* nor shall private property be taken for public use without just compensation."

FOURTEENTH AMENDMENT

Section 1

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge any privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

STATEMENT

The petitioner, Dr. Vadee Kroft; and Dr. D. B. Cheairs, and (Argonaut Southwest Insurance Co.), Insurer of Arkansas Baptist Medical Center, were sued by Wilbur H Cox on October 23, 1969 for negligence, for medical treatment (Vol. II, R.1-5).

A jury trial was held, and a judgment was rendered, finding Dr. Kroft 65% negligent, and Dr. Cheairs 35% negligent. However, Dr. Cheairs obtained a judgment notwithstanding the verdict, leaving Dr. Kroft 100% negligent, when the case was appealed to the Supreme Court of Arkansas (Vol.II, R.25-35).

While the case was on appeal, before the Arkansas Supreme Court, Dr. Kroft's attorney of record was appointed to fill a vacancy as Circuit Judge in Little Rock, which at the time resulted in her being without counsel or legal representation. During the course of the appeal, and while Dr. Kroft was without counsel and legal representation, the insurance carrier for Dr. Kroft, reached a settlement and agreed to pay same as satisfaction of the judgment in full to Wilbur H. Cox. Thereupon the attorneys for Wilbur H. Cox filed a motion before the Supreme Court of Arkansas to dismiss the appeal (Vol.I, R.22). Notice of this motion was served upon all attorneys, including the former attorney for Dr. Kroft, who at that time was Circuit Judge in Little Rock and no longer in private law practice (Vol.I, R.16-17).

The appeal was dismissed November 9, 1970, at a time when petitioner was without counsel or legal representation, and without her knowledge, consent, authority or approval (Vol.I, R.16-17).

When petitioner learned that her appeal had been dismissed, she retained other counsel in efforts to secure her day in Court, by appealing her cause of action. This was done by filing a petition for Writ of Certiorari before the Supreme Court of Arkansas, because she had lost her right of appeal, through no fault of her own and without notice or knowledge.

This highly technical maneuver, to a layman, denied petitioner her right of due process and left an impression of her being guilty of malpractice, without having the matter decided on its merits by having the record reviewed by the Arkansas Supreme Court.

While this matter involved here was one of extreme importance involving personal and professional property rights to petitioner, it is interesting to note (Vol.I, R.7, 10) no opinion was rendered by the Arkansas Supreme Court, and a response was never filed to any petitions filed by Dr. Kroft, that ever took issue with, or denied any contentions which she made, under oath.

A review of the record (record proper, Vol. II), reflects that Dr. Kroft was not negligent nor guilty of any malpractice and that the evidence shows that Dr. D. B. Cheairs and the Baptist Medical Center, if anyone, were guilty of negligence, because Dr. Kroft was an intern of only 16 days, employed (an undisputed employee), by the Baptist Medical Center and supervised by Dr. D. B. Cheairs.

St. Paul Fire and Marine Insurance Company was the carrier for both Dr. Kroft and Dr. Cheairs. Argonaut Southwest Insurance Company was the carrier for the Baptist Medical Center.

Judgment was entered against Argonaut Southwest Insurance Company (Vol.I, R.27), yet, St. Paul Fire and Marine Insurance Company, (petitioner's carrier) paid the judgment to Wilbur H. Cox, without petitioner's knowledge, consent, and approval, and contrary to the Order of the lower Court (Vol.II, R.25-28), and contrary to the insurance policy (Vol.I, R.23), and contrary to due process of law and constitutional procedural rights.

The absence of citations in petitioner's brief exist because the denial of her due process rights were so flagrant that the denial speaks clearly without necessity for citations.

It is undisputed and undenied that petitioner had legal representation or counsel.

Petitioner was deprived of her property (personal and professional), in derogation of the Constitution, and denied procedural rights of representation, and access to the Courts for a proper "airing" of her alleged day in Court.

REASON FOR GRANTING THE WRIT

The basis for the establishment of our form of government (specifically, the judicial branch) revolves around certain basic rights and rules that must be safeguarded by a Court which will invoke tribute and respect to those basics:

(1) to administer justice (2) to insure fair play as an existent part of its modus operandi (3) to insure that avenues of procedure are open to all citizens, and (4) paramount above all, to insure that every citizen shall have his day in Court by an attorney or representative who will have the faithful representation of that citizen's interest as his primary objective.

Petitioner was denied each of these basic attributes, and was stripped of her personal rights, and professional rights by the guilt of an act of omission, observed and approved by the petitioner's employer (Baptist Medical Center) and its agents.

Petitioner was denied her civil rights and constitutional procedural rights of due process, and was denied the most basic right afforded the citizenry, the right to counsel and legal representation.

Petitioner was found guilty of a malpractice judgment by reason of collective manuevering by other attorneys and insurance companies, who acted collectively to dismiss her appeal, while she was without counsel or legal representation.

The importance of this writ is to make certain that similar misconduct and wrongful procedure by technical

maneuvering will not occur to other citizens, whether the citizens are licensed physicians, or common laborers.

If this judgment as it now stands, is allowed to stand without the right of review to determine innocense or guilt, then our system of jurisprudence will be subject to total destruction by "technicality".

CONCLUSION

A casual reading of the records in this case and the petition for a writ of certiorari as filed before the Arkansas Supreme Court demonstrates that the trial, and the attempted appeal before the Arkansas Supreme Court, and the proceedings leading thereto were hardly more than a parody of the procedure contemplated by DUE PROCESS OF LAW. Petitioner simply asked the Supreme Court of Arkansas to give her the right of appeal, and the right to be heard before that Court. It is apparent that she had shown the Supreme Court of Arkansas more than probable cause therefor. Consequently, this Court should reverse the decision of the Supreme Court of Arkansas, and grant the petitioner the remedy she seeks, and the relief to which she is entitled.

Respectfully submitted,

EUGENE B. HALE, JR.

Counsel for Petitioner

1105 Union National Plaza
Little Rock, Arkansas 72201

APPENDIX
A

SUPREME COURT OF THE UNITED STATES
No. A-311, October Term, 1971
VADEE KROFT, M. D., ... PETITIONER

vs.

WILBUR H. COX, ... RESPONDENT

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including October 27, 1971.

/s/ Harry A. Blackmun

Associate Justice of the Supreme
Court of the United States

Dated this 21st
day of September, 1971